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UNCLAS GUATEMALA 000247

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SUBJECT: GUATEMALAN PROSECUTORS APPEAL RIOS MONTT DECISION

REF: GUATEMALA 00198

1. (U) Summary. The Guatemalan Public Ministry is appealing a judge's decision to dismiss charges of threats, coercion, sedition, and involuntary manslaughter against FRG leader Rios Montt. It claims the judge was wrong to dismiss the case rather than respond to the prosecutor's request for "provisional closure." End Summary.

2. (U) On February 3, under instructions from Chief Prosecutor Juan Luis Florido, the Public Ministry asked the Third Court of Appeals to overturn Judge Victor Herrera's decision to dismiss charges against Rios Montt. In their appeal, prosecutors noted they had only asked the judge for "provisional closure" and that, by dismissing the case, Judge Herrera had exceeded their request. Provisional closure (or deferred adjudication) would have allowed prosecutors to continue investigation and, if more evidence were collected, to reopen the case; dismissal closes the case permanently. Attorneys for the family of Hector Ramirez, the journalist who died of a heart attack while fleeing rioters, filed separate appeals as co-plaintiffs.

3. (U) Additionally, both the Public Ministry and the private attorneys are appealing sentences against 15 others who received 18 months prison, commutable to a fine, for illegal assembly. They argue that the judge should have imposed two years' imprisonment, commutable to a fine, as requested by the prosecutor.

4. (SBU) Comment: Responding to harsh press criticism, the Public Ministry's decision to appeal is an about-face from its initial effort (reftel) to cast Judge Herrera's decision as the best possible outcome. Media pundits en masse sought to portray Herrera's dismissal of the charges against Rios Montt as an outrageous denial that "Black Thursday" ever took place. The issue before Herrera, however, was not the mayhem caused by Rios Montt's rampaging supporters. The issue was whether there was sufficient evidence to prove in a court of law that Rios Montt had a hand in directing the vandals and rioters. On that score, the judge was correct in deciding that the Public Ministry, after two and a half years, had not uncovered sufficient evidence nor did the Public Ministry present a strategy for obtaining evidence that would justify keeping its "investigation" and charges against Rios Montt open. End comment.

DERHAM